IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5303 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALPESH JAGDISHBHAI SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5303 of 2003

MR AM PAREKH for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 5/3/2003 passed by the Commissioner of Police, Ahmedabad City and he has been declared as "dangerous person".

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Act, there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made to M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned counsel for the petitioner at length and learned AGP, Mr.Kodekar for the respondents. I have also perused the material on record. Learned AGP tenders affidavit-in-reply on behalf of detaining authority. The same is ordered to be taken on record. Learned counsel for the petitioner has stated that three offences have been registered against the detenu under Indian Penal Code and relying upon the said offences and statement of two witnesses, the detaining authority has passed the impugned detention order on 5/3/2003. He has mainly argued that the detenu has made a detailed representation to the concerned authority through advocate on 8/4/2003 which has been rejected by the authority on 10/4/2003 and the petitioner was accordingly communicated vide communication dtd.16/4/2003 and the petitioner received the said communication through jail on 19/4/2003. He tenders the xerox copy of the said communication. The same is ordered to be taken on record. Therefore, according to the learned counsel for the petitioner, there is a delay in communicating the decision of the representation to the detenu, which is unconstitutional. In support of the submission, the learned counsel for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

"We would emphasise that it is the duty of the

> State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned counsel for the petitioner does not press any other points.

5. The petition is allowed. The order of detention dated 5/3/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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